

September 29, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-31271
Summary Calendar

WALTER KOON,

Plaintiff-Appellant,

versus

RICHARD L. STALDER; BURL CAIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:04-CV-197

Before JOLLY, DAVIS and OWEN, Circuit Judges.

PER CURIAM:*

Walter Koon, Louisiana death row inmate # 351860, appeals the district court's dismissal of his civil rights suit, filed pursuant to 42 U.S.C. § 1983, for failure to exhaust administrative remedies. Koon's argument that administrative remedies on the due process and equal protection claims he raised were unavailable to him under Pope v. State, 792 So. 2d 713 (La. 2001), is unavailing as he is challenging the conditions of his confinement. See Ferrington v. Louisiana Dep't of Corr., 315 F.3d 529, 532 (5th Cir.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

2002); Peterson v. Tofton, 828 So. 2d 160, 163 (La. Ct. App. 2004). Inasmuch as the prison's records show that Koon did not exhaust the instant claims, he has failed to exhaust his administrative remedies as is required by the Prison Litigation Reform Act (PLRA). 42 U.S.C. § 1997e(a); Ferrington, 315 F.3d at 531.

This appeal is without arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because it is frivolous, it is DISMISSED. See 5TH CIR. R. 42.2. Koon now has one strike against him under the PLRA. See 28 U.S.C. § 1915(g); Adepeqba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996). Koon is CAUTIONED that if he accumulates three strikes, he will no longer be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

APPEAL DISMISSED AS FRIVOLOUS; SANCTION WARNING ISSUED.